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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,928	07/10/2001	Kemal Guler	10014417	9251

7590

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EXAMINER

OYEBISI, OJO O

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/902,928	Applicant(s) GULER ET AL.	
	Examiner OJO O. OYEBISI	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/25/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the phrase "inverted bids and "inverting the bid model" as mentioned in claims 4, 12 and 20. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
3. Claims 1-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-24 of copending Application No. 09903075. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because the limitations in the pending application will produce the same invention and they recite means or steps that are substantially the same and would have been obvious to one of ordinary skill in the art. For example, in the instant application, a method for determining a reserve price for a market is disclosed in the preamble, and in the copending application, a method for determining an auction format for a market is disclosed. However, in the body of claims of both applications, the means and steps recited are substantially the same. Thus, it would have been obvious to one of ordinary skill in the art to choose an auction format that specifies reserve price, to determine the optimal reserve price of the auction market. The omission of an element with a corresponding loss of function is an obvious expedient. See in re Karlson, 136 USPQ 184 and Ex parte Rainu, 168 USPQ 375. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 3, 5, 6, 9, 11-14, 17, 19, and 21-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Seymour et al (Sey hereinafter, US PAT: 6,871,190).

Re claim 1. Sey discloses a method for determining a reserve price for a market, said method comprising the steps of: selecting characteristics of said market (see col.5, lines 31-36, also see abstract); selecting a relevant bidding model (i.e., generating a bidding and selling strategy, see col.2 lines 30-60, also see col.6 lines 55-67); estimating a structure of said market (see col.4, lines 30-49 and col.5 lines 11-15); predicting a bidding behavior (i.e., recommendations to the seller and/or bidder regarding how to bid and/or sell is based on a prediction of the bidding behavior of the various bidders, see col.5 lines 7-20); predicting a first outcome of said market (i.e., the input data is transmitted to the processing unit of the seller site terminal and the optimum type of auction together with the optimum value of the reserve bid price for sale of such merchandise is determined....., see col.6, lines 56-59); evaluating said first outcome of said market (i.e., the input data is transmitted to the processing unit of the seller site terminal and the optimum type of auction together with the optimum value of the reserve bid price for sale of such merchandise is determined....., see col.6, lines 56-59. Note that to determine the optimum reserve price, the data regarding the auction including the seller, bidders and merchandise is used to evaluate and analyze what the predicted outcome would be for each auction format).

Re claim 3. Sey discloses the method, wherein said selecting a relevant bidding model step further comprises the steps of: receiving said auction characteristics data (see col.5, lines 29-26); accessing a database (see col.5, lines 21-25. Note that data

gathering exercises are disclosed, thus database is accessed to retrieve the said data); retrieving from said database a relevant bidding model (i.e., series of bidding and selling strategies are then generated for each type of auction type, see col.4, lines 49-51) wherein said bidding model is selected based on a corresponding relevance of said auction characteristics data (see col.5, lines 11-15. Note that input data is processed and used to determine the optimum values for the reserve bid price and for starting bid price); and outputting said relevant bidding model (i.e., the optimum values for the reserve bid price and for the starting bid price are displayed for the seller, see col.6 lines 56-65).

Re claim 5. Sey discloses the method, wherein said bidding model has embedded an unknown structure, and wherein said predicting a bidding behavior step further comprises the steps of: receiving said estimated structure (i.e., bid criteria, see fig.4 element 104); receiving said relevant bidding model (i.e., series of bidding and selling strategies are then generated for each type of auction type, see col.4, lines 49-51); substituting said estimated structure for said unknown structure (see col.4 lines 30-45); and outputting a prediction of bidding behavior (i.e., recommendations to the seller and/or bidder regarding how to bid and/or sell is based on a prediction of the bidding behavior of the various bidders, see col.5 lines 7-20).

Re claim 6. Sey discloses the method, wherein said predicting a first outcome step further comprises the steps of: receiving a second user input, wherein said second user input comprises (see col.6 lines 56-59): an evaluation criterion (see col.4 line 67, col.6, lines 56-59, the evaluation criteria used to determine the optimum type of auction is

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based on an evaluation of the profit generated or loss incurred); a candidate reserve price; and a constraint (see col.6 lines 56-59); receiving said estimated structure (i.e., bid criteria, see fig.4 element 104); receiving said bidding behavior prediction for said candidate reserve price (see col.5 lines 7-15), wherein said bidding behavior prediction further comprises a prediction under said constraint (see col.5 lines 7-15); obtaining a value of said evaluation criterion (see col.4 line 67, col.6, lines 56-59, the evaluation criteria used to determine the optimum type of auction is based on an evaluation of the profit generated or loss incurred), wherein said value is based on said estimated structure, said bidding behavior prediction, said candidate reserve price, and said constraint, said value comprising said first predicted outcome; and outputting said value (see col.6, lines 63-67, discussion of a display screen and customer confirmation).

Re claim 9. Claim 9 recites similar limitations to claim 1, and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 11. Claim 11 recites similar limitations to claim 3, and thus rejected using the same art and rationale in the rejection of claim 3.

Re claim 13. Claim 13 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5 above.

Re claim 14. Claim 14 recites similar limitations to claim 6, and thus rejected using the same art and rationale in the rejection of claim 6.

Re claim 17. Claim 17 recites similar limitations to claim 1, and thus rejected using the same art and rationale in the rejection of claim 1.

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Re claim 19. Claim 19 recites similar limitations to claim 3, and thus rejected using the same art and rationale in the rejection of claim 3.

Re claim 21. Claim 21 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 22. Claim 22 recites similar limitations to claim 6, and thus rejected using the same art and rationale in the rejection of claim 6.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Seymour et al (Sey hereinafter, US PAT: 6,871,190) in view of Rackson et al (Rackson hereinafter, US PAT: 6,415,270)

Re claim 2. Sey discloses the method, wherein said selecting characteristics step further comprises the steps of: receiving a first user input, wherein said first user input comprises information identifying an item to be auctioned (see col.6, lines 42-60); accessing a database (see col.5 lines 21-25, note that data gathering exercises are disclosed, thus database is accessed to retrieve the data); retrieving from said database auction characteristics data (see col.5 lines 29-36). Sey fails to explicitly disclose retrieving from said database historical bids data; wherein said auction characteristics comprise information relating to historical auctions of similar items; outputting said bids

data; and outputting said auction characteristics data. However, Rackson discloses retrieving from said database historical bids data (i.e., historical items of similar items sold from either an internal database or data retrieved from remote auction service; see Rackson col.24 lines 30-67) and outputting said bids data (i.e., the historical data may be displayed showing the normal distribution of final bids based on the strategies used or upon the condition of the item, see Rackson col.24 lines 45-57) and outputting said auction characteristics data (i.e., the historical data may be displayed showing the normal distribution of final bids based on the strategies used or upon the condition of the item, see Rackson col.24 lines 45-57). Thus, it would have been obvious to one of ordinary skill in the art to combine Sey and Rackson to determine the optimal selling parameters to be applied to the items that are being offered.

Re claim 10. Claim 10 recites similar limitations to claim 2, and thus rejected using the same art and rationale in the rejection of claim 2.

Re claim 18. Claim 18 recites similar limitations to claim 2, and thus rejected using the same art and rationale in the rejection of claim 2.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4, 7, 8, 12, 15, 16, 20, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Seymour et al (Sey hereinafter, US PAT: 6,871,190).

Re claim 4. Sey further discloses the method, wherein said estimating step further comprises the steps of: receiving said relevant bidding model (see col.4, lines 49-51); receiving said bids data (see col.5, lines 21-25); estimating an estimated latent structure of said market (see col.4, lines 30-49 and col.5 lines 11-15). Sey does not explicitly disclose expressing unobservable variables in terms of observable bids, wherein said unobservable variables are expressed in terms of observable bids by inverting said bid model; transforming said bids data to a sample of inverted bids, wherein said bids data are transformed by inverting said bid model, wherein said sample of inverted bids receives application of statistical density estimation techniques to obtain said estimated structure; and outputting said estimated structure. However, it is old and well-known in the fields of mathematics, economics and statistics to use the above mentioned methodologies i.e., express unobservable variables in terms of observable bids; create sample of the data; make estimates/assumptions about the market; and report/generate an output of the results, for the purpose of using historical data, reasonable assumptions to make predictions/estimations about the future (e.g., economic forecast). Thus, it would have been obvious to one of ordinary skill in the art to modify Sey to include what is old and well known in the art for the purpose of estimating the structure of said market based on the historical data on record.

Re claim 7. Sey discloses the method; wherein said evaluating said first outcome step further comprises the steps of: receiving a third user input, wherein said third user input comprises a plurality of candidate reserve prices see col.6, lines 56-59, Sey input interface can accommodate more than one user)); receiving a predicted outcome for

each said candidate reserve price (see col.7 lines 15-20). Sey does not explicitly disclose calculating descriptive statistics for each said candidate reserve price, wherein said descriptive statistics comprise a mean and a variance; ranking each said candidate reserve price with respect to said calculated mean and generating corresponding rankings for said plurality; and outputting said descriptive statistics and said rankings. However, it is old and well known in the fields of mathematics and statistics/economics to use methodologies disclosed hereinabove for the purpose of comparison and decision-making (e.g., product purchase decisions; evaluating business opportunities etc). Thus, it would have been obvious to incorporate what is old and well known in Sey for the purpose of evaluating an auction format/reserve prices, comparing different reserve prices and ultimately making a decision about the optimal reserve price.

Re claim 8. Sey discloses the method, further comprising the steps of: selecting a best reserve price, wherein said best reserve price comprises the candidate reserve price within said plurality having the highest said ranking; and outputting said best reserve price (see col.6 line 55 through col.7 lines 20).

Re claims 12 and 20. Claims 12 and 20 recite similar limitations to claim 4, and thus rejected using the same art and rationale in the rejection of claim 4.

Re claims 15 and 23. Claims 15 and 23 recite similar limitations to claim 7, and thus rejected using the same art and rationale in the rejection of claim 7.

Re claim 16. Claim 16 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

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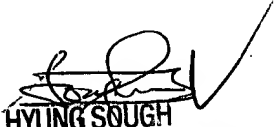
Re claim 24. Claim 24 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571) 272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HYUNG S. SOUGH can be reached on (571)272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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